APPENDIX.

"Revenue Act of 1918," Feb. 24, 1919, Sec. 600 as amended by "Liquor Taxing Act of 1934," Jan. 11, 1934, Sec. 2.

Tax Rate:—"There shall be levied and collected on all distilled spirits now in bond or that have been or that may be hereafter produced in or imported into the United States, in lieu of the internal-revenue taxes now imposed thereon by law, an internal-revenue tax at the following rates, to be paid by the distiller or importer when withdrawn, and collected under the provisions of existing law:

"On and after the effective date of Title I of the Liquor Taxing Act of 1934, $2.00 on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon."

26 U. S. C. A. 1158 (b) (1); (Sec. 2809 (b) (1) I. R. C.)

Distilled Spirits:—"Distilled spirits, spirits, alcohol and alcoholic spirit, within the true intent and meaning of this chapter, is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation of grain, starch, molasses, or sugar, including all dilutions and mixtures of this substance."

26 U. S. C. A. 1150 (c); (Sec. 2800 (c) I. R. C.)

Time of Attachment:—"The tax shall attach to distilled spirits * * * as soon as this substance is in existence as such, whether it be subsequently separated as pure or impure spirit, or be immediately, or any subsequent time, transferred into any other substance, either in the process of original production or by any subsequent process."

26 U. S. C. A. 1150 (e); (Sec. 2800 (e) (1) I. R. C.)

Lien:—"The tax shall be a first lien on spirits distilled, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the lot or tract of land whereon the distillery is situated, and on any buildings thereon from the time said spirits are in existence as such until * * * the said tax is paid."

26 U. S. C. A. 1171; (Sec. 2820 I. R. C.)

Receiving Cisterns:—"* * * the owner, agent, or superintendent of any distillery * * * shall erect, in a room or building to be provided and used for that purpose, and for no other, and to be constructed in the manner to be prescribed by the Commissioner, two or more receiving cisterns, each to be at least of sufficient capacity to hold all the spirits distilled during the day of twenty-four hours, into which shall be conveyed all the spirits produced in said distillery; * * *. Such cisterns and the room in which they are contained shall be in charge and under the lock and seal of the storekeeper-gauger designated for that duty; * * *. On the third day after the spirits are conveyed into such cisterns they shall be drawn off into casks, under the supervision of such storekeeper-gauger and be removed directly to the distillery warehouse * * *."

26 U. S. C. A. 1168; (Sec. 2817 I. R. C.)

Survey of Distillery:—"On receipt of notice that any person * * * wishes to commence the business of distilling, the Collector, * * * shall proceed * * * to make a survey of such distillery for the purpose of estimating and determining its true spirit producing capacity for a day of twenty-four hours * * *.

"A written report of such survey shall be made in triplicate, of which one copy shall be delivered to the distiller, * * * and the survey shall take effect upon the delivery of such copy to the distiller. * * *

"The Secretary of the Treasury in the case of any distillery may, under regulations, waive such of the requirements of this section as he determines may be waived without danger to the revenue. * * *"

(*Note:* The Secretary did not waive the above provisions regarding the survey until by regulation (T. D. 4794) issued March 11, 1938 subsequent to the loss in question.)
26 U. S. C. A. 1192 (a); Sec. 2841 (a) I. R. C.)

Distillers' Books:—"Every person who makes or distills * * * shall keep a record, in the form and manner prescribed by the Commissioner, of the receipt on the distillery

premises, and the use thereon, of materials intended for use in the distillation of spirits, and of the number of gallons of spirits distilled, the number of gallons placed in the warehouse, and the proof thereof, the number of gallons sold or removed, with the proof thereof, and the name, place of business, and residence of the person to whom sold."

26 U. S. C. A. 1195; (Sec. 2844 I. R. C.)

Monthly production return of distiller:—"On the 1st day of each month, or within five days thereafter, every distiller shall render to the collector of the district an account in duplicate, taken from his books, stating the quantity and kind of materials used for the production of spirits each day, and the number of wine gallons and of proof gallons of spirits produced and placed in warehouse * * *. One of the said duplicate returns shall be transmitted by the Collector to the Commissioner."

26 U. S. C. A. 1197; (Sec. 2846 I. R. C.)

Assessment for deficiencies in production and excess of material used:—"On the receipt of the distiller's return in each month, the Commissioner shall inquire and determine whether the distiller has accounted for all the grain or molasses used, and all the spirits produced by him in the preceding month. If he is satisfied that the distiller has reported all the spirits produced by him, and the quantity so reported is found to be less than 80 per centum of the producing capacity of the distillery as estimated according to law, he shall make an assessment for such deficiency at the rate of tax imposed by law for every proof gallon. In determining the quantity of grain used, fifty-six pounds shall be accounted as a bushel; and if the Commissioner finds that the distiller has used any grain or molasses in excess of the capacity of his distillery as estimated according to law, he shall make an assessment against the distiller at the rate of tax imposed by law for every proof gallon of spirits that should have been produced from the grain or molasses so used in excess, which assessment shall be made whether the quantity of spirits reported is equal to or exceeds 80 per centum of the producing capacity of the distillery. *If the Commissioner finds that the distiller has not*

accounted for all the spirits produced by him, he shall, from all the evidence he can obtain, determine what quantity of spirits was actually produced by such distiller, and an assessment shall be made for the difference between the quantity reported and the quantity shown to have been actually produced, at the rate of tax imposed by law for every proof gallon. Provided, that the actual product shall be assumed to be in no case less than 80 per centum of the producing capacity of the distillery as estimated according to law. All assessments made under this section shall be a lien on all distilled spirits on the distillery premises, the distillery used for distilling the same, the stills, vessels, fixtures, and tools therein, the tract of land whereon the said distillery is located, and any buildings thereon, from the time such assessment is made until the same shall have been paid." (Italics ours.)

(*Note:* Under the Act of June 26, 1936, Sec. 302, authorizing the Secretary to waive the above survey requirements, (26 U. S. C. A. 1168) the Secretary was also authorized to relieve the distiller from such requirements of above Sec. 1197 and "of other provisions of law relating or incidental to survey requirements" as might be waived without danger to the revenue. Under Reg. or T. D. 4794, issued *March 11, 1938*, he also relieved distillers from the following requirements of the above Sec. 1197:

"(d). From so much of the provisions of * * * (U. S. C. 1934 Ed., Title 26, Sec. 1197), as make the distiller liable to an assessment for a deficiency in producing less than 80 per centum of the producing capacity of the distillery as estimated according to law; and as make him liable to an assessment for the tax upon the spirits that should have been produced from the materials found to have been used in excess of the capacity of the distillery for any month as estimated according to law."

Distillers were, however, not relieved from keeping books (26 U. S. C. A. 1192 (a)) and making the monthly return (26 U. S. C. A. 1195) and the Commissioner was not relieved from reviewing the distillers' accounting of spirits produced as directed by above Sec. 1197.)